

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in France on 3/16/2004. It is noted, however, that applicant has not filed a certified copy of the France application 0450527 as required by 35 U.S.C. 119(b).

### *Information Disclosure Statement*

2. The information disclosure statement filed 9/15/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Please provide a copy of listed French patent 2 741 436 with the next response to this action.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is unclear whether the bridges of material are formed from an elastically deformable material or are formed from the same elastically deformable material as the material of the projectiles?

Claim 4 recites the broad recitation "*the thickness of the bridges of material accounts for less than 10%*", and the claim also recites "*better less than 5%*" which is

the narrower statement of the range/limitation. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

5. Claim 9 recites the broad recitation "*a hardness ranging between 20 and 55 Shore A*", and the claim also recites *in particular between 35 and 45 Shore A*" which is the narrower statement of the range/limitation. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

In claim 11, it is unclear whether either or both of the projectiles and the bridges of material are formed from an elastically deformable material?

In claim 12, it is unclear whether either or both of the projectiles and the bridges of material comprise the elastically deformable material of line 3?

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the bridges of material also comprising an elastically deformable material.

Claims 11 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the step of supplying the layer of projectiles and bridges of material comprising an elastically deformable material.

Claims 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the step of molding the projectiles and the bridges of material from an elastically deformable material.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lombardini et al. (EP 0 957 330 A2). The following rejections are made in the light of the 112 2<sup>nd</sup> paragraph rejections outlined above.

Lombardini et al. disclose a fragmentable grenade (Fig. 1), comprising: - an explosive charge 3, - a layer 1 of elastically deformable plastic projectiles connected together by bridges of silicone material produced by molding together with the projectiles (see paragraph [0012] lines 10-13), said layer 1 surrounding the charge 3 and being designed for enabling the plastic projectiles to separate and to disperse when the said charge 3 explodes.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as obvious over Lombardini et al. (EP 0 957 330 A2).

Regarding Lombardini et al., the limitations of claims 2-10, 13 and 14 would have been obvious to one of ordinary skill in the art at the time the invention was made because they claim features that were either old and well known in the art or which comprise an obvious design choice within the skill level of one of ordinary skill in the art at the time the invention was made.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the attached PTO FORM 892.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES S. BERGIN whose telephone number is (571)272-6872. The examiner can normally be reached on Monday - Wednesday and Friday, 8.30 - 5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James S. Bergin/  
Primary Examiner, Art Unit 3641

Application/Control Number: 10/592,935  
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